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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 **Nicholas Race**, individually and
16 on behalf of all similarly situated
17 individuals,

18 Plaintiff,

19 vs.

20 **Floyd, Inc.**, a Delaware
21 corporation; and **Does 1-10**,
22 inclusive;

23 Defendants.

CASE NO.

**CLASS ACTION COMPLAINT
FOR:**

- 1) Violation of California's
False Advertising Law (Bus.
& Prof. Code §§ 17500, et
seq.);
- 2) Violation of California's
Consumer Legal Remedies
Act (Cal. Civ. Code §§ 1750, et
seq.); and
- 3) Violation of California's Un-
fair Competition Law (Bus. &
Prof. Code §§ 17200, et seq.);

Demand for Jury Trial

1 Plaintiff Nicholas Race, by and through his counsel of record, brings this ac-
2 tion on behalf of himself and all other similarly situated consumers who purchased
3 qualifying products from Floyd, Inc. and alleges as follows:

4 **INTRODUCTION**

5 1. Reference pricing is an advertising technique where retailers display a
6 product's current, typically discounted, price next to a higher, regularly offered
7 price for that product. That higher, regularly offered price is known as the "Refer-
8 ence Price."

9 2. "[R]eference prices are important cues consumers use when making
10 the decision concerning how much they are willing to pay for the product." See
11 Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An investigation into the effects of*
12 *Advertised Reference Prices on the Price Consumers are Willing to Pay for the*
13 *Product*, J. of Applied Bus. Research 6, no. 1, pp. 65-66 (1990); see also Patrick J.
14 Kaufmann, N. Craig Smith, & Gwendolyn K. Ortmeier, *Deception in Retailer*
15 *High-Low Pricing: A 'Rule of Reason' Approach*, 70 J. Retailing 115, 118 (1994)
16 ("reference to a retailer's normal or regular price in retail sale prices advertising
17 provides the consumer with information used to determine perceived value").

18 3. Empirical research indicates that "[i]nflated reference prices can [...]
19 increase consumers' value perceptions [...], reduce their search intentions for
20 lower prices, increase their purchase intentions, and reduce their purchase inten-
21 tions for competing products." Dhruv Grewal & Larry D. Compeau, *Pricing and*
22 *Public Policy: A Research Agenda and an Overview of the Special Issue*, J. Public
23 Policy & Marketing 18, no. 1, p. 7 (1999).

24 4. In other words, by advertising discounts off higher reference prices,
25 retailers can increase the perceived value of products to consumers and decrease
26 their desire to search for competing products, making them more likely to buy the
27 retailer's product.

28 5. Further, by representing that discounts are temporary, retailers can

1 increase a consumer’s sense of urgency to buy the product now rather than later or
2 risk losing the discount.

3 6. While offering legitimate discounts to achieve these results is a valid
4 form of competition, offering fake ones—with fictitious reference prices and/or ex-
5 piration dates—is deceptive, illegal, and harmful to consumers.

6 7. Indeed, research “suggest[s] that consumers are likely to be misled into
7 a willingness to pay a higher price for a product simply because the product has a
8 higher reference price.” *An investigation into the effects of Advertised Reference*
9 *Prices on the Price Consumers are Willing to Pay for the Product, supra*, at p. 66.
10 One study showed that “on average, consumers were willing to pay \$178.60 for the
11 product with a \$289 reference price” but “were willing to pay \$250.80 for the iden-
12 tical product with a \$429.00 reference price.” *Id.*

13 8. The temptation to advertise fake discounts is significant for retailers,
14 whose profits can be increased by simply claiming that their products, or “similar”
15 products, regularly sell for more than they really do.

16 9. To combat such deceptive and unfair practices, California’s False Ad-
17 vertising Law (“FAL”) prohibits businesses from making statements that they
18 know or should know to be untrue or misleading. Cal. Bus. & Prof. Code § 17500.
19 This includes a prohibition on advertisements stating or suggesting that a product
20 is discounted when, in fact, it is not.

21 10. The FAL considers a sale to be fake—and illegal—when it continues for
22 a period of more than 3 months, *i.e.*, a permanent sale. Cal. Bus. & Prof. Code §
23 17501 (“No price shall be advertised as a former price [. . .] unless the alleged for-
24 mer price was the prevailing market price [. . .] within three months next immedi-
25 ately preceding the publication of the advertisement.”).

26 11. Similarly, California’s Consumer Legal Remedies Act (“CLRA”) prohib-
27 its “advertising goods or services with the intent not to sell them as advertised” and
28 specifically prohibits, among other things, “false or misleading statements of fact

1 concerning reasons for, existence of, or amounts of price reductions.” Cal. Civ.
2 Code § 1770(a)(9), (13).

3 12. Fake or permanent discounts violate these laws. They are anti-con-
4 sumer, anti-competitive, and must be brought to a halt.

5 **PARTIES**

6 13. Plaintiff **Nicholas Race** is and was at all relevant times domiciled in
7 San Mateo, California.

8 14. The proposed Class includes both current California residents and for-
9 mer residents who were domiciled in California when they purchased one or more
10 qualifying products from Floyd, Inc. while those products were advertised with
11 false or misleading discounts.

12 15. Defendant **Floyd, Inc.** (“Floyd” or “Defendant”) is a Delaware corpo-
13 ration with its principal place of business located at: 1948 Division Street, Ste. 101,
14 Detroit, MI 48207. It is a direct-to-consumer manufacturer and retailer of home
15 furnishings.

16 16. Plaintiff is not currently aware of the names and true identities of Does
17 1-10. Plaintiff reserves the right to amend this complaint to allege their true names
18 and capacities when this information becomes available. Each Doe defendant is
19 responsible for the damages alleged pursuant to each of the causes of action as-
20 serted, either through its own conduct or vicariously through the conduct of others.
21 All further references in this complaint to any of the named Defendants include
22 the fictitiously named Doe defendants.

23 17. At all times alleged herein, each Defendant was an agent, servant, joint
24 employer, employee, partner, and/or joint venture of every other Defendant and
25 acted within the scope of their relationship with the others. Moreover, the conduct
26 of every Defendant was ratified by each other Defendant.

27 **JURISDICTION AND VENUE**

28 18. This Court has subject matter jurisdiction under 28 U.S.C. §

1332(d)(2). The amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and the matter is a class action in which one or more members of the proposed Class are citizens of a state different from that of Defendant.

19. This Court has personal jurisdiction over Defendant. Defendant does business in California. It advertises and sells its products in California to a market of consumers there. Due to Defendant's actions, its products have been marketed and sold to consumers in California and have harmed consumers in California. Plaintiff's claims likewise arose out of Defendant's contacts with this forum. Due to Defendant's actions, Plaintiff purchased Defendant's product in California and was harmed in California.

20. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(d) because Defendant would be subject to personal jurisdiction in this District if this District were a separate state. Defendant advertises and sells its products to consumers in this District, serves a market for its products in this District, and Plaintiff's claims arose out of Defendant's contacts in this forum. Venue is also proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred here.

FACTUAL ALLEGATIONS

Floyd Advertises Sales with False and Misleading "Discounts"

21. Defendant Floyd, Inc. markets and sells a variety of home furnishings (the "Products") directly to consumers.¹

22. The Products are privately branded (i.e., Floyd products) and—with few exceptions—exclusively sold by Defendant.

23. To that end, Defendant maintains a public website where it advertises

¹ Based on information and belief, Defendant is also the manufacturer of the Products. However, the meaning of "Products" includes all products sold by Defendant directly to consumers – regardless of whether those products are indeed manufactured by Defendant.

1 its Products for sale. Consumers can purchase the Products through an online store
2 hosted on this website (<https://floydhome.com/>).

3 24. Like many businesses, Floyd advertises “discounts” or “sales,” during
4 which the prices for its Products are purportedly reduced from higher, regular
5 prices (i.e., “Reference Prices”).²

6 25. However, these Reference Prices are fictitious, rendering Floyd’s
7 “sales” and advertised “discounts” illusory. Defendant’s Products are *always* ad-
8 vertised with discounts off higher Reference Prices, so no consumer *ever actually*
9 *pays* the References Prices from Defendant represents they are discounted.

10 26. In other words, the “discounted” prices *are* Defendant’s regular prices,
11 and its Reference Prices are fictitious ones used solely to induce potential custom-
12 ers into purchasing its Products and paying higher prices for them.

13 27. This practice is known as false reference pricing. False reference pric-
14 ing occurs when a seller advertises an artificial, inflated price for the sole purpose
15 of enabling the subsequent offer of a large reduction from that price. In such cases,
16 the “reduced” price is, in reality, just the seller’s regular price and the “bargain”
17 being advertised is a false one where the purchaser is not receiving the value he or
18 she expects from the purchase.

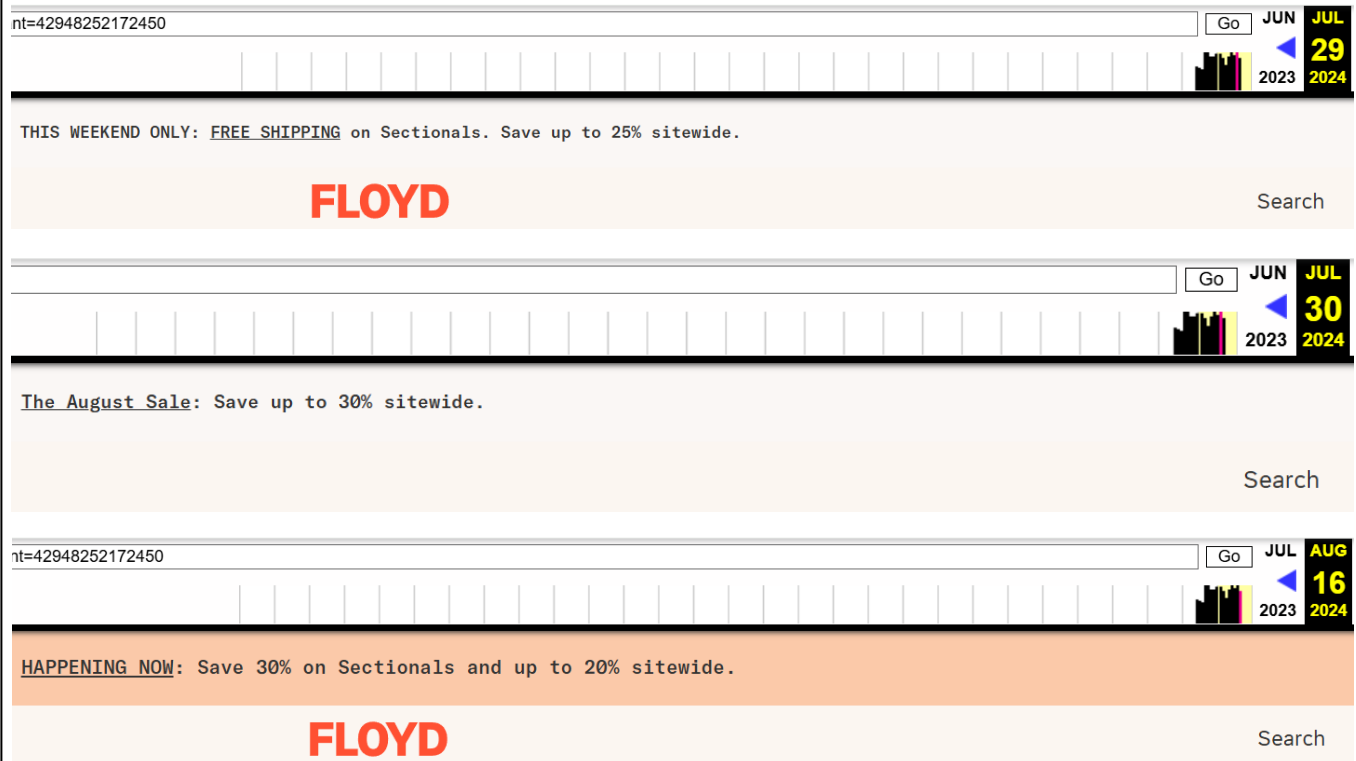
19 28. At any given time, on its website, Defendant advertises significant “dis-
20 counts” relative to the Reference Prices it misrepresents its Products to have. De-
21 fendant communicates this in at least five distinct ways:

22 29. *First*, Defendant continuously advertises sitewide sales on a banner at
23 the top of its website while simply changing the name of the sale to reflect the
24
25
26

27 ² The meaning of “Reference Prices” also includes Defendant’s use of comparison
28 prices, comp prices, comparison values, and/or comp values – verbiage it began
using on its website on and after June 8, 2024.

period during which it is in effect.³

30. For example, from July 26-29, 2024, Defendant's sales banner stated: "THIS WEEKEND ONLY: FREE SHIPPING on Sectionals. Save up to 25% sitewide." The next day, on July 30, 2024, it read: "The August Sale: Save up to 30% sitewide." The "August Sale" ran until August 15, 2024, and on the next day, it was immediately followed up with: "HAPPENING NOW: Save 30% on Sectionals and up to 20% sitewide." Example screen captures are provided below:



31. Based on information and belief, this practice has resulted in all but a few of Defendant's Products being advertised with discounts at all times throughout the relevant period – the only exceptions being "Free" items, "Serviceability" items, and one other item identified as "Partner Products: Bed + Headboard SKUs" (discussed below).

³ While the advertised discounts may vary by a small percentage, during these sales, all but a few of Defendant's products remain on sale to one degree or another.

32. Consistent with this, Defendant’s website contains a subpage where all of its Products are advertised (<https://floydhome.com/collections/all-1>). This subpage lists 163 items for sale (at time of filing). Except for a few items listed as “Free” (such as fabric swatches), items identified with the tag “Serviceability”⁴ (which appear to be replacement parts for other Products), and one item identified as “Partner Products: Bed + Headboard SKUs,” *all* of Defendant’s Products are (at time of filing) advertised as being on sale for a discounted price.

33. Prior to June 8, 2024, Defendant’s sales advertisements unequivocally passed off its discounts as being reductions from the Reference Prices regularly and formerly charged for its Products. During that time, Defendant advertised sales with statements such as:

- “Save 30% on sectionals and 20% on everything else during The Memorial Day Sale! Promo subject to change. Some exclusions apply.”
- “Save 30% on sectionals and 20% on everything else during The Spring Sale! Promo subject to change. Some exclusions apply.”
- “Save 30% on sectionals and 20% on everything else during The Presidents’ Day Sale! Plus, shop warehouse closeouts for up to 60% off. Promo subject to change. Some exclusions apply.”
- “The New Year’s Sale: Save 30% on sectionals and 20% on everything else, sitewide.”

34. This practice continued beyond June 8, 2024, but since that date, Defendant’s sales advertisements have included an asterisk (“*”) with an explanation below the advertisement stating: “*Savings off of comp value. Promotion subject to change. Some exclusions apply.” However, aside from the addition of this asterisk, Defendant did not change the formatting of its sales advertisements in any material way. Defendant has continued to advertise non-stop sales with sitewide

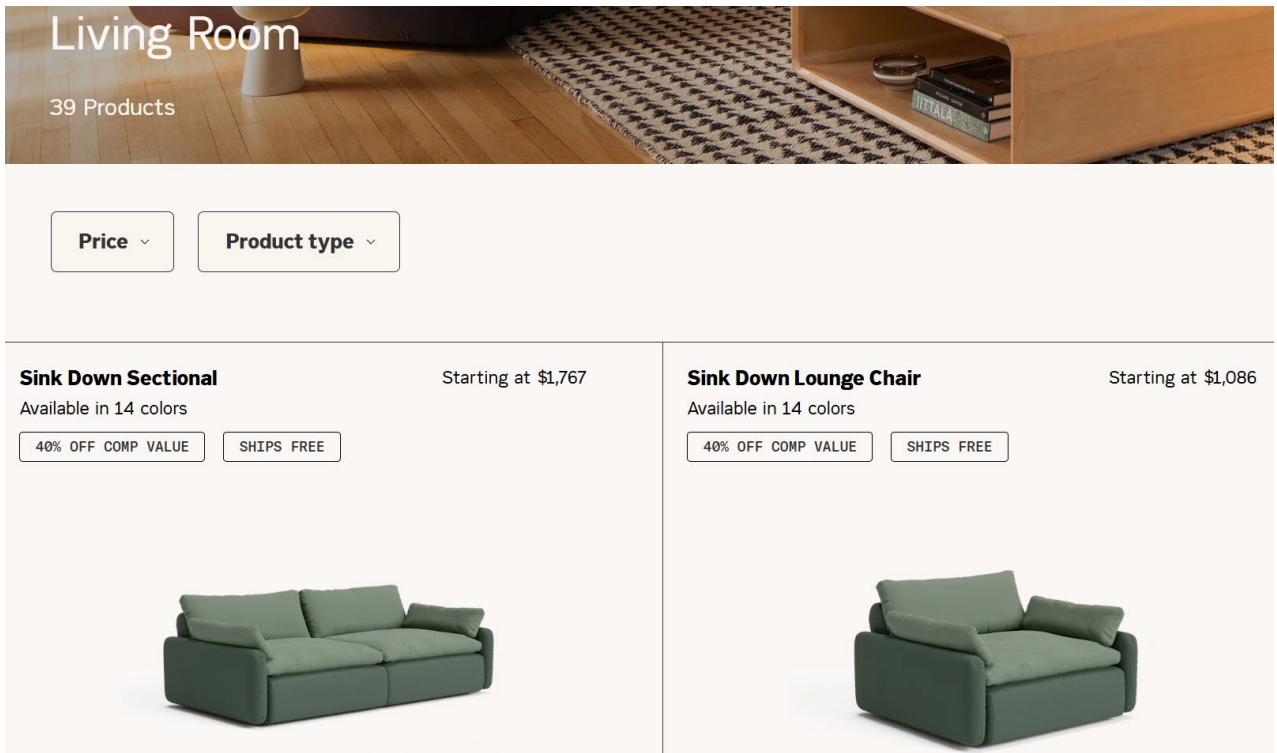
⁴ Some but not all “Serviceability” items are advertised with discounts.

1 discounts while simply changing the names of the sales and sometimes the
2 amounts “discounted.” For example, Defendant has advertised the following sales
3 since June 8, 2024:

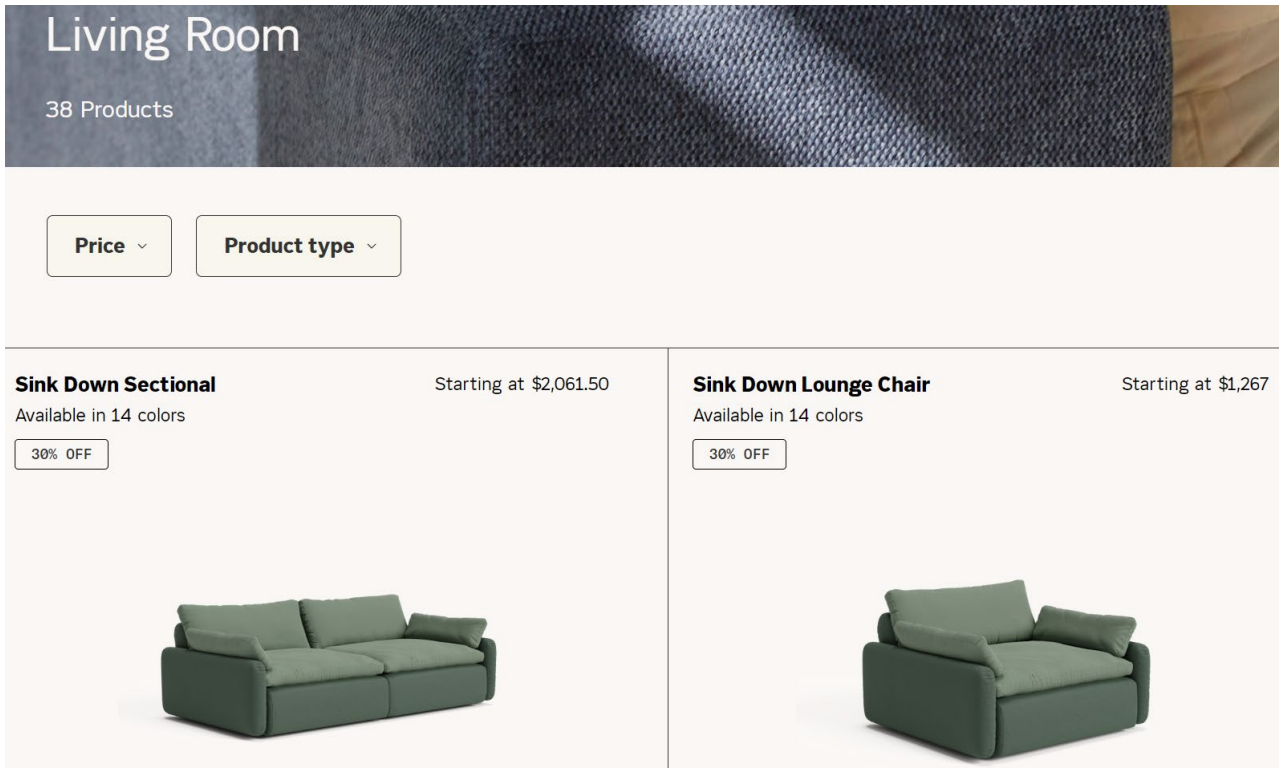
- 4 • “Save 30% on sectionals and 20% on everything else during The Summer
5 Sale! Promo subject to change. Some exclusions apply.”
- 6 • “Save 25% and free shipping on sectionals. Save 20% on everything else
7 during The Weekend Flash Sale!* Promo subject to change. Some exclu-
8 sions apply.”
- 9 • “Save 30% on sectionals and up to 20% on everything else during The La-
10 bor Day Sale!*”
- 11 • “The Fall Sale is happening now, save up to 30%* sitewide.”
- 12 • “Shop our Black Friday Preview Sale. Enjoy 40%* off and Free Shipping
13 on Sectionals. Save 20%* on everything else, sitewide.”

14 35. Further, based on information and belief, none of the Reference Prices
15 used for Defendant’s Products changed after June 8, 2024, to reflect “comp values”
16 instead of prices it represented as those regularly and formerly charged for its
17 Products for years prior.

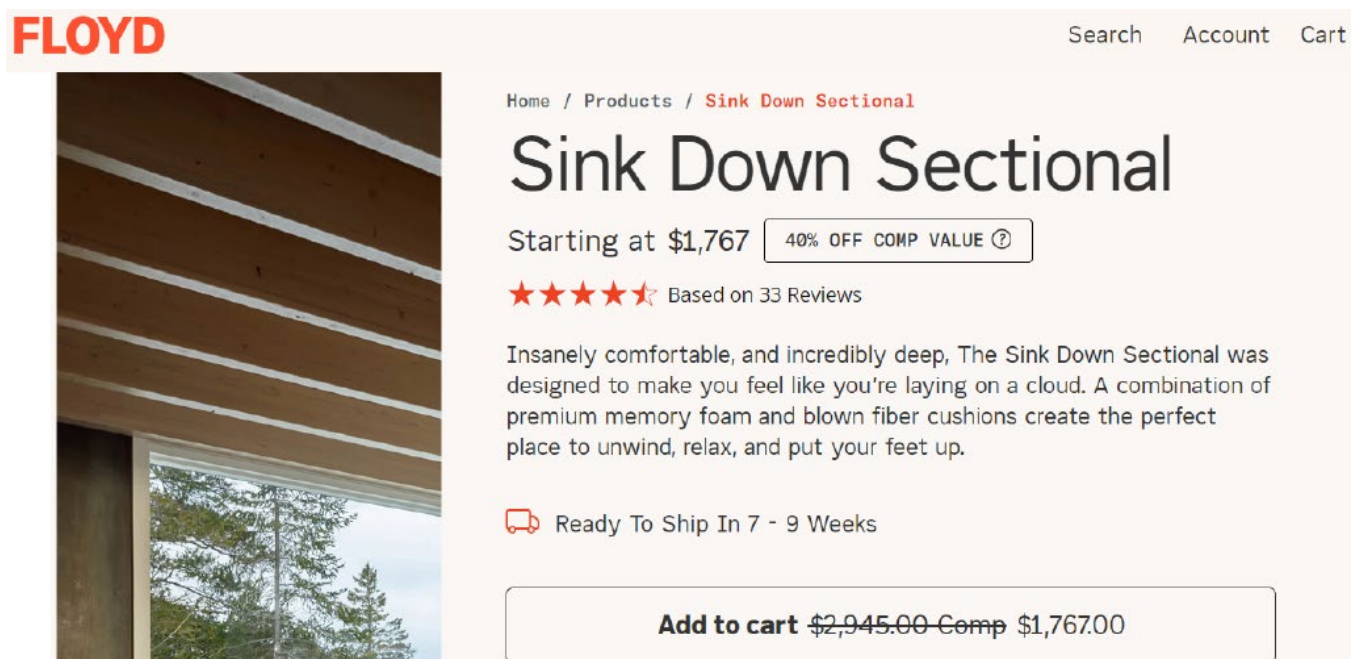
36. *Second*, Defendant’s website is organized into collections (e.g., Living Room, Bedroom, Home Office, etc.), wherein, at least since June 8, 2024, Products belonging to the collection are currently listed for sale with a “Starting at” price displayed alongside a specified percentage “OFF COMP VALUE” (e.g. “40% OFF COMP VALUE”, “20% OFF COMP VALUE,” etc.). An example screen capture is provided below:



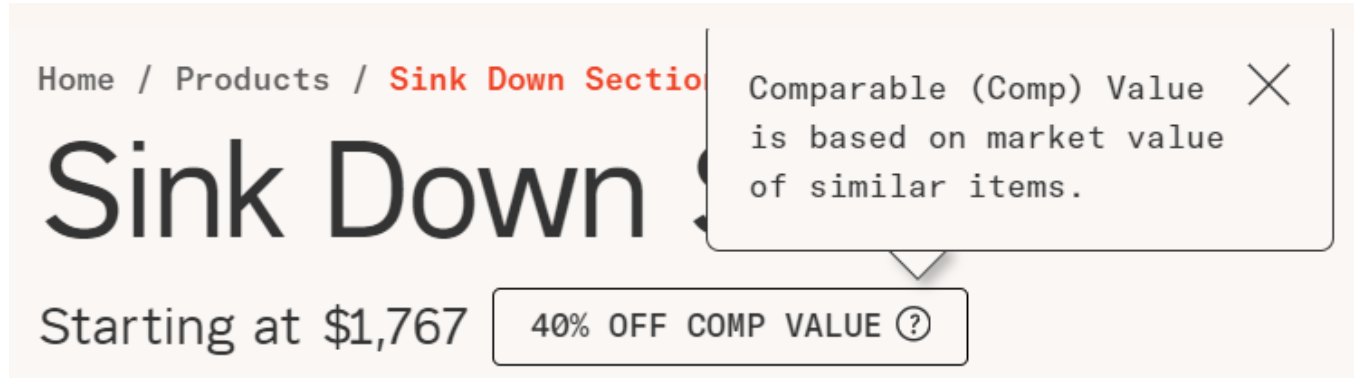
37. However, prior to June 8, 2024, Defendant simply listed its Products for sale on these collection pages with “Starting at” prices displayed alongside a specified percentage off and no reference to “comp value” (e.g., “30% OFF”). An example screen capture is provided below:



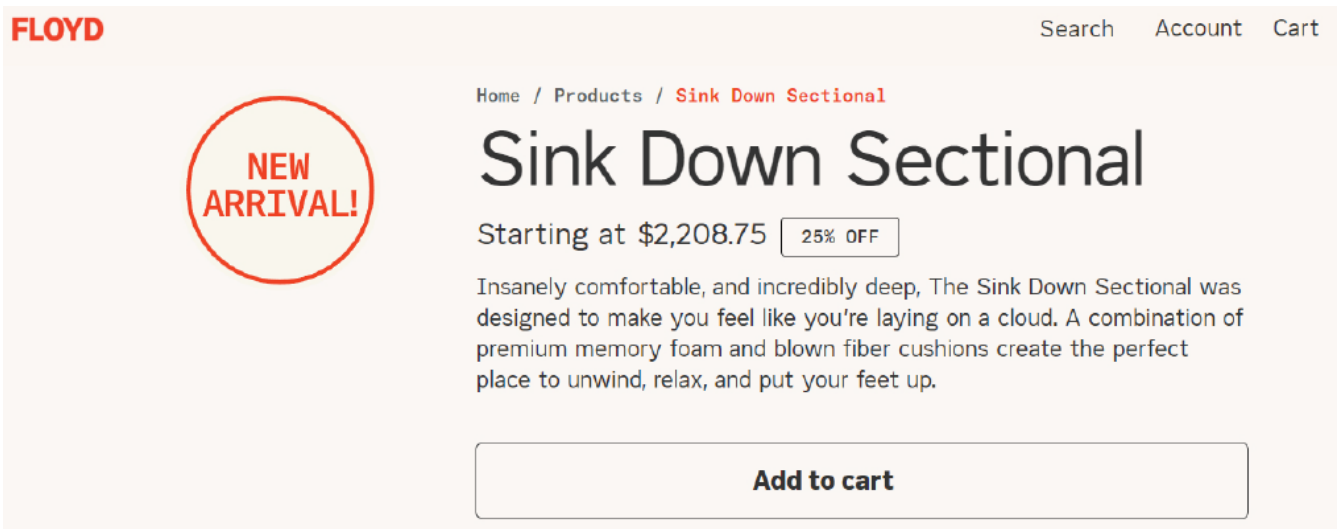
38. *Third*, on each individual Product’s listing page, Defendant currently advertises that Product with the same “Starting at” price displayed next to a specified percentage “OFF COMP VALUE” (e.g., “40% OFF COMP VALUE”). An example screen capture is provided below:



39. If a customer clicks on a nearby question mark, a pop-up is displayed stating that “Comparable (Comp) Value is based on market value of similar items.” An example screen capture is provided below:



40. However, before June 8, 2024, Defendant's Product listing pages simply listed “Starting at” prices next to an unclickable box displaying a specified percentage off that price (e.g., “25% OFF”). An example screen capture is provided below:



41. Below the “Starting at” price is a box that can be clicked to add the Product to an online shopping cart. At the time of filing this action, this clickable box also lists the Product's purportedly discounted price next to a struck-out Reference Price followed by “Comp” (e.g., “**Add to cart** ~~\$2,945.00~~ Comp \$1,767.00”). See screen capture in ¶ 38 above.

1 42. Archived snapshots of Defendant’s Product listing pages do not cap-
2 ture these struck-through Reference Prices. Still, upon information and belief, this
3 “**Add to cart**” box also displayed struck-out Reference Prices before June 8, 2024,
4 but without the word “Comp.”


5 43. *Fourth*, after a customer clicks the “**Add to cart**” box, they are di-
6 rected to their online shopping cart wherein the Product has been placed for pur-
7 chase. For each item in the shopping cart, the purportedly discounted purchase
8 price is listed in bold next to a Reference Price that Defendant identifies as being
9 the Product’s “Value” (e.g., “\$1,465.00 Value **\$879.00**”).⁵ To the right of this, De-
10 fendant displays a negative dollar amount representing the customer’s purported
11 “Savings,” which is the summed difference between each sale price and Reference
12 Price for Products in their online shopping cart (e.g., “Savings -\$1,874.00”). Below
13 this, the customer’s subtotal is listed, and further below that is a clickable “Check-
14 out” box. An example screen capture is provided below:⁶

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25 ⁵ The Wayback Machine’s does not contain any archived “snapshots” of shopping
26 carts, so Plaintiff’s counsel could not confirm whether pre-June 8, 2024, shopping
27 carts referred to “Value.”

28 ⁶ Because some of Defendant’s Products are modular and configurable, each indi-
vidual module is listed as a separate item in this online shopping cart.

X

Shopping Cart (3)




Sink Down Middle X

Color:
Oat

Savings -\$1,874.00

\$1,465.00 Value **\$879.00**

Subtotal \$2,811.00




Sink Down Left End X

Color:
Oat

Shipping, taxes and promo codes
calculated at checkout.

\$1,610.00 Value **\$966.00**



Sink Down Right End X





Color:
Oat

\$1,610.00 Value **\$966.00**

44. Like the “**Add to cart**” box, archived snapshots of Defendant’s website did not capture customers’ shopping carts, but based on information and belief, the screen capture in ¶ 43 also accurately depicts what they looked like before June 8, 2024.

45. *Fifth*, when a customer clicks the “Checkout” box, they are directed to a checkout page where each Product in their online shopping cart is again listed with its purportedly discounted price below a struck-out Reference Price, as well as a negative dollar amount equal to the difference (or purported savings). At the bottom of this, Defendant calculates and lists the total purported savings (e.g.,

“TOTAL SAVINGS \$1,874.00”). An example screen capture is provided below:

	1 Sink Down Middle Oat handle: https://floydhome.com/products/the-sink-down-sectional? configuration=sd3s1&variant=42948252172450 SECTIONAL40BF (- \$586.00)	\$1,465.00 \$879.00
	1 Sink Down Left End Oat handle: https://floydhome.com/products/the-sink-down-sectional? configuration=sd3s1&variant=42948252172450 SECTIONAL40BF (- \$644.00)	\$1,610.00 \$966.00
	1 Sink Down Right End Oat handle: https://floydhome.com/products/the-sink-down-sectional? configuration=sd3s1&variant=42948252172450 SECTIONAL40BF (- \$644.00)	\$1,610.00 \$966.00
<input type="text" value="Discount code or gift card"/> <input type="button" value="Apply"/>		
Subtotal • 3 items		\$2,811.00
Shipping ⓘ		Calculated at next step
Total		USD \$2,811.00
 TOTAL SAVINGS \$1,874.00		

46. Like shopping charts, archived snapshots of Defendant’s website did not capture customers’ checkout pages, but based on information and belief, the screen capture in ¶ 45 also accurately depicts what they looked like before June 8, 2024.

47. The Reference Prices listed and struck out on Defendant’s Product

1 listing pages, identified as the Products' "Value" in customers' shopping carts, and
2 again listed and struck out on checkout pages, could only reasonably be understood
3 by consumers to represent prices regularly and formerly charged for the Products,
4 and that the sale being advertised offered a temporary discount off of those prices.

5 48. This is equally true of Defendant's sales advertisements before and af-
6 ter June 8, 2024. Defendant's addition of an asterisk and reference to "comp value"
7 in its sales advertisements, starting on June 8, 2024, did not make those advertise-
8 ments any less misleading or deceptive because its representations that the sales
9 were limited-time offers were designed to mislead customers into thinking that the
10 pricing would revert back to their advertised Regular Prices after the sale.

11 49. Defendant knew and counted on the fact that reasonable consumers
12 interpreted its sales advertisements to mean that it regularly and formerly charged
13 the Reference Prices for its Products, and that they would receive a discount off
14 those prices if they made purchases during the advertised sale.

15 50. Defendant also knew and counted on the fact that reasonable consum-
16 ers would reasonably interpret these advertisements to mean that Defendant
17 would—sometime soon—charge the Reference Prices again for its Products, so if
18 they waited too long to make their purchases, then they would miss out on the ad-
19 vertised "discounts." But, in reality, Defendant's Products have never been sold at
20 their Reference Prices (later called Comp Values), so the discounts were just illu-
21 sions.

22 ***Plaintiff's Counsel's Investigation***

23 51. To confirm that Floyd offers perpetual discounts off Reference Prices
24 that its Products were never actually sold at, Plaintiff's counsel investigated its
25 sales advertising history using the Internet Archive's Wayback Machine (available
26 at www.archive.org).⁷ That investigation indicated that Defendant's Products had

27 _____
28 ⁷ The Internet Archive, available at www.archive.org, is a library that archives web
pages. See <https://archive.org/about/>

1 been continuously discounted, sitewide, since at least July 4, 2022.

2 52. The Internet Archive’s Wayback Machine stores archived versions (or
3 “snapshots”) of Defendant’s website, including subpages, going back to May 8,
4 2018.⁸ Since at least July 4, 2022, it has also stored archived snapshots of a sub-
5 page where Defendant advertises its sitewide sales and displays listings for all its
6 Products “on sale,” which is located at: [https://floydhome.com/collections/sale-](https://floydhome.com/collections/sale-promo)
7 [promo](https://floydhome.com/collections/sale-promo) (“Sale Promo Page”).

8 53. Since that time (and until the time of filing), the Wayback Machine has
9 captured 103 “snapshots” of Defendant’s Sale Promo Page from 76 different dates.
10 In 100% of those snapshots, Defendant advertised sitewide sales during which all
11 of its Products appear to have been discounted by a minimum of 15% against their
12 false Reference Prices—although they are frequently discounted by even greater
13 percentages.

14 54. Thus, for over *two years*, Defendant’s Products have *never* actually
15 been sold at their advertised Reference Prices. As a result, customers never actually
16 received the advertised discounts because the discounted prices were just Defend-
17 ant’s regular prices.

18 55. Defendant’s individual Product listing pages confirm the same. For ex-
19 ample, the listing page for Defendant’s Sink Down Sectional (the same Product
20 that Plaintiff purchased in its three-piece configuration on February 19, 2024) was
21 archived by the Wayback Machine 803 times between May 10, 2023, and August
22 28, 2024. Except for three calendar weeks where no snapshots were archived,
23 Plaintiff’s counsel downloaded at least one snapshot per calendar week from the
24 Wayback Machine. In 100% of these snapshots, Defendant’s Sink Down Sectional
25 was advertised as being discounted by 20% or more.

26 _____
27 ⁸ The Wayback Machine has archived snapshots of <https://floydhome.com/> going
28 back further than May 8, 2018, however, those websites do not appear to be asso-
ciated with Floyd, Inc.

56. Based on information and belief, Defendant’s Sink Down Sectional was first introduced to the market on or about May 10, 2023. Because it has only ever been sold by Defendant, it has *never* been sold at its advertised Reference Price to *anyone, anywhere, at any time*.

Floyd’s Reference Prices Are Not Prevailing Prices or Comp Values

57. Floyd is the manufacturer of the Products, and the vast majority of its Products are sold directly to consumers (at purportedly discounted prices) through its website.

58. Based on Plaintiff’s counsel’s investigation, the only other seller of Defendant’s Products is Haworth, Inc., which sells through its website at: <https://store.haworth.com/collections/floyd>. However, their selection of Floyd Products is extremely limited, including only the Floyd Shelving System, and two-piece, three-piece, four-piece, and five-piece versions of its Form Sectional. In contrast, Defendant’s All Products collection page lists 163 Products for sale – all of which are always *on* “sale,” except for the aforementioned “Free” items, “Serviceability” items, and one other item identified as “Partner Products: Bed + Headboard SKUs.”

59. As the manufacturer and exclusive seller of nearly all its Products, Defendant sets the prevailing market prices for those Products, i.e., because of their exclusivity, the *actual* prices it charges for the Products constitute their market prices.⁹ But since Defendant has never sold these Products at their Reference Prices, those prices have necessarily never been their bona fide former or

⁹ See *People v. Superior Court (J.C. Penney Corp., Inc.)*, 34 Cal.App.5th 376, 409 (2019), as modified on denial of reh’g (May 6, 2019) (“under section 17501, when a retailer sells in-house goods, the retailer’s actual prices regarding those goods constitute their market prices”); see also *Spann v. J.C. Penney Corp.*, 307 F.R.D. 508, 527 (C.D. Cal. 2015), modified (C.D. Cal. 2016) 314 F.R.D. 312 (where defendant sold “private and exclusive branded items,” it was appropriate to apply defendant’s “own prices as the measure of prevailing market prices”).

1 prevailing market prices.

2 60. To the extent that any of the Products are sold by third-party resellers,
3 their prices are not the *prevailing* market prices because only a small fraction of
4 the Products are sold by them.

5 61. Because *the* Products are *always* discounted from Reference Prices,
6 and because Defendant's actual prices *are* the market prices, the advertised Refer-
7 ence Prices were *never* the prevailing market prices during the requisite three-
8 month period under the FAL.

9 62. Further, prior to June 8, 2024, Defendant unequivocally represented
10 its Reference Prices to be regular and former prices for its Products. When Defend-
11 ant instead began referring to Reference Prices on its website as "comp values,"
12 none of those Reference Prices were changed to reflect the market value of similar
13 items – they continued to reflect the same Reference Prices that Defendant had
14 advertised on its website for years prior.

15 63. In reality, Defendant's advertised Reference Prices do not actually refer
16 to the "comp values" of any similar items. Defendant simply included references to
17 "comp values" on its website in a misguided attempt to avoid lawsuits such as this
18 one. Indeed, in an email sent from Defendant to Plaintiff on June 18, 2024, dis-
19 cussing Plaintiff's order of the Sink Down Sectional, Defendant referred to the dis-
20 count received by Plaintiff as a discount *off the MSRP*, stating: "the total value of
21 your credits and discounts to date [is] 50% of the MSRP."

22 64. Further, as previously mentioned, Defendant still refers to its Products'
23 prices as MSRPs on its FAQ page.

24 ***Floyd's Advertisements Violate California Law***

25 65. California's False Advertising Law ("FAL") prohibits any business from
26 making statements concerning its products or services that it knows or should
27 know to be untrue or misleading. *See* Cal. Bus. & Prof. Code § 17500. This prohibi-
28 tion includes false or misleading statements suggesting that a product is

1 discounted from a bona fide former price when, in reality, the former price is a
2 fictitious one. *See e.g.*, Cal. Bus. & Prof. Code § 17501 (“No price shall be advertised
3 as a former price of any advertised thing, unless the alleged former price was the
4 prevailing market price [. . .] within three months.”).

5 66. Further, California’s Consumer Legal Remedies Act (“CLRA”) prohib-
6 its “advertising goods or services with the intent not to sell them as advertised”
7 while specifically prohibiting “false or misleading statements of fact concerning
8 reasons for, existence of, or amounts of price reductions.” Cal. Civ. Code §
9 1770(a)(9), (13).

10 67. California’s Unfair Competition Law (“UCL”) generally outlaws “un-
11 fair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

12 68. Moreover, the Federal Trade Commission’s regulations on pricing con-
13 firm that Defendant’s scheme is unfair and deceptive. Their regulations prohibit
14 false or misleading “former price comparisons,” for example, making up “an arti-
15 ficial, inflated price ... for the purpose of enabling the subsequent offer of a large
16 reduction” off that price. 16 C.F.R. § 233.1. They also prohibit false or misleading
17 “retail price comparisons” that falsely suggest that the seller is “offer[ing] goods at
18 prices lower than those being charged by others for the same merchandise” when
19 this is not the case. 16 C.F.R. § 233.1.

20 69. As detailed above, Defendant made false and misleading statements
21 about its Reference Prices. Specifically, Defendant has continuously advertised its
22 Products as being sold at discounts from Reference Prices masquerading as regular
23 and former prices. However, these Reference Prices were never the prevailing mar-
24 ket prices for Defendant’s Products at any time during the three months preceding
25 publication of each advertisement. Thus, they have never been bona fide former or
26 prevailing market prices.

27 70. Even after Defendant began referring to Reference Prices on its web-
28 sites as “comp values,” those prices were still portrayed as representing regular and

1 former prices because they were advertised under the banners of what could only
2 be reasonably understood as irregular sales offering limited-time discounts. In
3 each case, these sale advertisements clearly described a limited period (e.g., Sum-
4 mer, Weekend, Fall, Black Friday, etc.) during which Defendant offered to sell its
5 Products at purportedly reduced prices.

6 71. Further, each advertisement after June 8, 2024, continued to state ex-
7 plicitly, “[p]romotion subject to change,” giving further credence to the reasonable
8 beliefs of consumers that Defendant’s Products were only temporarily discounted
9 from prices it regularly charged before the sale—and would charge again after the
10 sale—regardless of whether those References Prices were MSRPs or “comp values.”

11 72. Defendant’s addition of an asterisk and reference to “comp value” in its
12 sales advertisements did not make those advertisements any less misleading or de-
13 ceptive, because implicit in its representations was the conclusion that the sale
14 prices for its Products would revert back to their Reference Prices after the sale.

15 73. Thus, Defendant’s post-June 8, 2024, advertisements could still be
16 read by reasonable consumers to indicate that Defendant formerly sold the Prod-
17 ucts at their advertised Reference Prices. *See Inga v. Bellacor.com, Inc.*, No.
18 219CV10406MWFMRW 2020 WL 5769080, at *3 (C.D. Cal., July 17, 2020) (“No-
19 tably, the presence of both ‘Compare’ and ‘Regular’ reference prices, in addition to
20 a ‘Sales Price,’ could be read to suggest that Defendant formerly sold items at the
21 ‘Regular’ price.”).

22 74. Defendant knew and counted on these reasonable beliefs of customers
23 to induce them into purchasing Products they would not have otherwise purchased
24 and/or pay higher prices than they would have otherwise paid for the Products.

25 75. In short, Defendant has continuously advertised its Products with the
26 intent not to sell them as advertised; for example, by advertising goods as pos-
27 sessing bona fide former prices and/or market values with the intent to sell goods
28 that ever actually commanded those former prices and/or market values.

76. Further, Defendant’s false reference pricing scheme is patently unfair and deceptive. As described above, Defendant advertises fake discounts to false Reference Prices, which induces consumers to purchase the Products and causes them to pay higher prices for them, resulting in substantial economic injury to its customers. But, as explained above, the Products were never actually sold at their purported Reference Prices, so the advertised discounts are illusory.

77. Reasonable consumers who rely on Defendant to provide accurate and truthful representations about their prices cannot reasonably avoid this injury. Defendant’s false discounts offer no countervailing benefits to the public. Misrepresenting the Products’ prices solely benefits Defendants while harming consumers and honest competitors alike.

78. As such, Defendant’s business practices are unfair, deceptive, false, and misleading, in violation of California’s laws.

Floyd’s False Reference Pricing Scheme Harm Consumers

79. Empirical research indicates that “[i]nflated reference prices can [...] increase consumers’ value perceptions (transaction value and acquisition value), reduce their search intentions for lower prices, increase their purchase intentions, and reduce their purchase intentions for competing products.” Dhruv Grewal & Larry D. Compeau, *Pricing and Public Policy: A Research Agenda and an Overview of the Special Issue*, J. Public Policy & Marketing 18, no. 1, p. 7 (1999). These retailer-positive outcomes result from several distinct types of inferences consumers make about advertised reference prices. See Patrick J. Kaufmann, N. Craig Smith, & Gwendolyn K. Ortmeyer, *Deception in Retailer High-Low Pricing: A ‘Rule of Reason’ Approach*, 70 J. Retailing 115, 118-22 (1994).

80. First, consumers infer that “the ‘regular’ price reflects the product’s intrinsic value, and therefore is a fair price for the product.” *Id.*, at p. 119. “If the consumer wished to purchase a product of the quality indicated by the retailer’s regular price, he or she might be induced to take advantage of the advertised

1 savings to do so.” *Id.*

2 81. *Second*, consumers infer that “the retailer’s ‘regular’ price reflects the
3 prevailing competitive price and therefore is the market price of the product.” *Id.*
4 “Under the second inference, consumers may believe that rational retailers, aware
5 of market conditions, set and adjust their regular prices so as to be competitive in
6 that market.” *Id.*, at pp. 118-19. “The direct effect of this inference is to limit active
7 consumer search for competitor price information.” *Id.*, at p. 119.

8 82. *Third*, consumers infer that “the ‘regular’ price becomes the penalty
9 price paid only by those unable to wait even the short time for the retailer’s fre-
10 quent sales events.” *Id.*, at p. 122. In other words, this inference creates a sense of
11 urgency among consumers to buy now.

12 83. In a study measuring the effects of false reference pricing on consum-
13 ers’ purchasing behavior, “[p]articipants were more likely to purchase an item
14 when the selling price appeared discounted” from made-up original prices. Jennie
15 Huang, *The Trill of the Deal: Quantifying the Price of Perceived Discounts and*
16 *Mark-ups*, manuscript, p. 11 (2018). “Moreover, the larger the perceived discount,
17 the higher the purchasing rate.” *Id.*

18 84. It was observed that a perceived discount of 10% led to a 3.8 percentage
19 point increase in the purchasing rate, while a perceived discount of 20% led to a
20 6% increase, and a perceived discount of 40% led to a 10.7 percentage point in-
21 crease. *Id.*, pp. 11 & 38, Table A1.

22 85. Using these tactics, Defendant leads reasonable consumers to believe
23 that its struck-out Reference Prices are its regular prices (i.e., prices at which its
24 Products were recently offered for sale before the advertised “discounts” went into
25 effect). In other words, reasonable consumers reasonably believe that Defendant’s
26 Reference Prices represent amounts that consumers normally must pay for De-
27 fendant’s Products, did pay before its current “sale” began, and will pay again after
28 that “sale” ends.

1 86. Reasonable consumers also reasonably believe that Defendant’s adver-
2 tised Reference Prices represent the prevailing market prices and true market val-
3 ues of its Products.

4 87. Thus, reasonable consumers reasonably conclude that by purchasing
5 Products during an advertised sale, they are receiving—at the advertised dis-
6 count—Products with prevailing market prices and true market values equal to the
7 advertised Reference Prices. For example, for a Product purportedly marked down
8 to \$2,811.00 from \$4,685.00, reasonable consumers would expect that they are
9 receiving a \$1,874.00 discount off a bona fide former price, and that the Product
10 has a true market value that is \$1,874.00 greater than what they are spending.

11 88. Reasonable consumers then *buy* Defendant’s products expecting to re-
12 ceive the benefit of their bargain—a discount in the *full* amount being advertised—
13 which they reasonably fear they could lose access at any given moment.

14 89. However, Plaintiff’s and Class Members’ reasonable expectations have
15 *not* been met. Instead of receiving Products with market values equal to advertised
16 Reference Prices, they received items worth less. Instead of receiving significant
17 discounts, Plaintiff and Class Members received little or no discounts.

18 90. Thus, Defendant’s illegal advertisements harm consumers by depriv-
19 ing them of the reasonable expectations to which they are entitled.

20 91. Defendant is incentivized to engage in this illegal conduct because con-
21 sumers who are presented with discounts are substantially more likely to make
22 purchases: “[n]early two-thirds of consumers surveyed admitted that a promotion
23 or a coupon often closes the deal, if they are wavering or are undecided on making
24 a purchase,”¹⁰ while, “two-thirds of consumers have made a purchase they weren’t
25 originally planning to make solely based on finding a coupon or discount,” and
26 “80% [of consumers] said they feel encouraged to make a first-time purchase with

27 _____
28 ¹⁰ <https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>

a brand that is new to them if they found an offer or discount.”¹¹

92. Similarly, when consumers believe that an offer is expiring soon, a sense of urgency makes them more likely to buy a product and less likely to comparison shop or make purchases from other retailers.¹²

93. Thus, Defendant’s advertisements harm consumers by inducing them, based on false or misleading information, to make purchases they would not have otherwise made.

94. Further, research “suggest[s] that consumers are likely to be misled into a willingness to pay a higher price for a product simply because the product has a higher reference price.” *An investigation into the effects of Advertised Reference Prices on the Price Consumers are Willing to Pay for the Product*, *supra*, at p. 66. One study showed that “on average, consumers were willing to pay \$178.60 for the product with a \$289 reference price” but “were willing to pay \$250.80 for the identical product with a \$429.00 reference price.” *Id.*

95. Thus, Defendant’s false and misleading advertisements artificially increase consumer demand for its Products, creating upward pressure on the prices that can be charged for its Products. As a result, consumers pay higher prices for the Products than they would absent the misrepresentations described above.

Plaintiff Was Misled by Floyd’s Advertisements

96. On February 19, 2024, Plaintiff Nicholas Race purchased a Sink Down Sectional in the three-piece configuration from Defendant’s website. He made this purchase while living in San Mateo, California.

¹¹ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online, Especially Among Millennial Buyers (prnewswire.com)

¹² <https://cxl.com/blog/creating-urgency/> (addition of a countdown timer increased conversion rates from 3.4%-10%); Dynamic email content leads to 400% increase in conversions for Black Friday email | Adestra (uplandsoftware.com) (400% higher conversation rate for ad with countdown timer); *see also* Dhruv Grewal & Larry D. Compeau, Pricing and Public Policy: A Research Agenda and an Overview of the Special Issue, *J. Public Policy & Marketing* 18, no. 1, p. 7 (1999).

1 97. Plaintiff recalls that after placing this Product in his online shopping
2 cart, before deciding to purchase it, his shopping cart displayed each component
3 of the Product's purportedly discounted purchase price in bold next to a Reference
4 Price that was identified as being the Product's "Value." Plaintiff also recalls that
5 his checkout page listed purportedly discounted prices below struck-out Reference
6 Prices, with a negative dollar amount equal to the difference (or purported sav-
7 ings).

8 98. An order confirmation email from Defendant to Mr. Race shows that
9 he ordered three purportedly discounted Products: (1) Sink Down Middle with a
10 listed Reference Price of \$1,465.00 and sale price of \$1,025.50; (2) Sink Down Left
11 End with a Reference Price of \$1,610.00 and sale price of \$1,127.00; and (3) Sink
12 Down Right End with a Reference Price of \$1,610.00 and sale price of \$1,127.00.
13 The subtotal for this order was \$3,279.50, whereas the total of Reference Prices
14 equaled \$4,685.00.

15 99. Consistent with this, the version of Defendant's listing page for this
16 Product archived by the Wayback Machine on February 19, 2024, shows that the
17 Sink Down Sectional was advertised as being "30% OFF" when Mr. Race made this
18 purchase. Further, the sales banner at the top of Defendant's webpage stated: "Save
19 up to 30% off with the Presidents' Day Sale + shop warehouse closeouts up to 60%
20 off!" Nowhere, at that time, did Defendant's webpage refer to "comparison" or
21 "comp" values.

22 100. Mr. Race read and relied on these representations from Defendant's
23 website, including in his online shopping cart and checkout page, and order con-
24 firmation email, that the Products were on sale and being sold to him at a discount
25 from their regular prices (i.e., Reference Price). Mr. Race understood this to mean
26 that Defendant used to charge the Products' Reference Prices before the sale began
27 and would charge them again after the sale ended.

28 101. Thus, Mr. Race reasonably believed that he was receiving a substantial

1 discount off the regular prices charged for the Products, was receiving products
2 with substantially higher market values than the prices he paid for them, and
3 would miss out on the benefit of this “bargain” if he did not purchase the Products
4 during the advertised sale.

5 102. Mr. Race would not have purchased the Products but for these reason-
6 able beliefs based on Defendant’s representations described above. Mr. Race only
7 purchased the Products because he believed they were discounted from bona fide
8 former prices, in the full amounts being advertised, and that he would receive
9 Products with higher market values equal to their advertised Reference Prices in
10 exchange for purchasing them before the advertised sale ended.

11 103. However, Defendant’s representations were false. The Products were
12 never sold at their advertised Reference Prices—neither before nor after the adver-
13 tised sale—so the discounts advertised by Defendant were illusory and Mr. Race
14 did not receive the benefit of his bargain.

15 ***No Adequate Remedy at Law***

16 104. Legal remedies are inadequate because they would not prevent De-
17 fendant from continuing to engage in the unfair and deceptive advertising prac-
18 tices described above. Plaintiff would consider purchasing Products from Defend-
19 ant again in the future if he could reasonably believe that their advertised Refer-
20 ence Prices and discounts were truthful.

21 105. Thus, without an injunction, Plaintiff and Class Members have no re-
22 alistic way of knowing which—if any—of Defendant’s Reference Prices, purported
23 discounts, and supposedly time-limited sales are not false or deceptive. Accord-
24 ingly, Plaintiff and Class Members are unable to rely on Defendant’s advertising in
25 the future, and so cannot purchase the Products they would otherwise consider
26 purchasing from Defendant in the future. Thus, Plaintiff and Class Members face
27 an imminent threat of future harm without an injunction.

28 **CLASS ACTION ALLEGATIONS**

106. Plaintiff brings this action on behalf of himself and as a class action on behalf of members of the following defined Class:

- All persons who, while in the state of California and within the applicable statute of limitations period, purchased from Defendant's website one or more Products advertised with a discounted price on Defendant's website.

107. **Numerosity and Ascertainability.** The proposed Class contains members so numerous that a separate joinder of each member of the class is impractical. There are thousands or perhaps even tens of thousands of class members, each of whom can be identified through Defendant's sales records and/or public notice.

108. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members, which predominate over issues affecting individual Class Members, including, but not limited to:

- a. Whether Defendant falsely advertised Reference Prices for its Products as being former prices for those Products;
- b. Whether Defendant falsely advertised Reference Prices for its Products as being prevailing market prices for those Products;
- c. Whether Defendant falsely advertised Reference Prices for its Products as being prevailing market prices for similar products;
- d. Whether the purported discounts advertised by Defendant reflected any actual discounts or savings off bona fide Reference Prices;
- e. Whether Defendant made any other false or misleading statements of fact in its advertisements;
- f. Whether Plaintiff and Class Members reasonably relied on Defendant's false or misleading advertisements when purchasing its Products;
- g. Whether Defendant's conduct constitutes violations of California's False Advertising Law, Consumer Legal Remedies Act, and/or Unfair Competition Law;

1 h. Whether Defendant's conduct constitutes violation any other federal
2 and/or California pricing regulations; and

3 i. Whether Plaintiff and Class Members sustained damages as a result of
4 any of the aforementioned violations, and, if so, the proper measure of their dam-
5 ages, including interest, penalties, costs, attorneys' fees, and equitable relief.

6 109. **Typicality.** Plaintiff's claims are typical of the proposed Class. Plain-
7 tiff, like all other Class Members, purchased one or more qualifying Products from
8 Defendant while advertised on its website as being discounted from Reference
9 Prices that were not bona fide former prices or prevailing market prices for the
10 Products.

11 110. **Adequacy.** There are no material conflicts of interest between Plain-
12 tiff and the proposed Class that would make class certification inappropriate.
13 Plaintiff will fairly and adequately protect the interests of the proposed Class, and
14 he understands his obligation to inform the Court of any relationships, conflicts,
15 or differences with any Class Member(s). Moreover, Plaintiff has retained compe-
16 tent attorneys as proposed class counsel, who are well-versed in the rules govern-
17 ing class action discovery, certification, and settlement, and who will vigorously
18 assert the claims of all Class Members.

19 111. **Superiority.** A class action is superior to all other available means for
20 the fair and efficient adjudication of this dispute. The damages incurred by indi-
21 vidual Class Members, while significant, are small in comparison to the burden
22 and expense of individualized litigation over Defendant's conduct. Further, the
23 court system would be overwhelmed by individual lawsuits if all Class Members
24 separately sought redress. Such individualized litigation increases the delay and
25 expense to all parties, and to the court system, due to the complex legal and factual
26 issues of this case.

27 112. Individualized litigation also creates the potential for inconsistent or
28 contradictory judgments. By contrast, the class action device presents far fewer

management difficulties; it allows the hearing of claims that might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

113. Plaintiff contemplates providing individual notice to all members of the Class defined above as identified through Defendant's records.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of California's False Advertising Law

Bus. & Prof. Code §§ 17500, et seq.

(On Behalf of Plaintiff and the Class)

114. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

115. Plaintiff brings this cause of action on behalf of himself and all members of the Class.

116. Bus. & Prof. Code § 17500 provides that "[i]t is unlawful [. . .] with intent directly or indirectly to dispose of real or personal property [. . .] to make or disseminate [. . .] any advertising device [. . .] which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or [. . .] with the intent not to sell that personal property [. . .] so advertised at the price stated therein, or as so advertised."

117. Bus. & Prof. Code § 17501 further provides: "No price shall be advertised as a former price of any advertised thing, *unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding* the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement." (emphasis added).

118. As alleged more fully above, Defendant continuously advertises

1 sitewide sales on its website during which its Products are all advertised as being
2 discounted from purported former prices (“Reference Prices”). Because these sales
3 are continuous and sitewide, *all* of Defendant’s Products are *always* discounted.

4 119. In addition to sales banners, Defendant advertises Product on its web-
5 site with Reference Prices, specified percentage offs, and purportedly discounted
6 prices, sometimes also striking out the Reference Prices. These representations are
7 also made in customers’ shopping carts and during the checkout process, where
8 Defendant further calculates and displays customers’ purported savings.

9 120. After June 8, 2024, Defendant added an asterisk (“*”) to its advertise-
10 ments with an explanation that savings were “off of comp value,” and included
11 “COMP” wherever it specified the percentage discount for a Product (e.g., “30%
12 OFF COMP” instead of “30% OFF”). However, in all other ways Defendant’s sales
13 advertisements continued to be portrayed as discounts to former or regular prices.
14 They still clearly described what could only be reasonably understood by consum-
15 ers as limited-time sales during which limited time discounts were offered.

16 121. Plaintiff and Class Members reasonably understood these advertise-
17 ments to represent discounts from former or prevailing market prices for the Prod-
18 ucts, which customers paid before the sale began would pay again after the sale
19 ended.

20 122. However, unbeknownst to Plaintiff and the Class, the Reference Prices
21 advertised by Defendant as former prices were never the prevailing prices for its
22 Products. Nor do Defendant’s advertisements indicate whether or when the pur-
23 ported former prices were ever actually offered because, in reality, the Products
24 have never been sold for their advertised Reference Prices—only at discounted
25 prices.

26 123. Defendant’s representations about the regular or former prices of its
27 Products were and continue to be untrue and misleading.

28 124. This practice of advertising Products at continuously discounted prices

1 along with Reference Prices passed off as regular and former prices, which are ma-
2 terially greater than actual prevailing market prices for the Products, constitutes
3 an untrue and misleading advertising practice in violation of California's False Ad-
4 vertising Law.

5 125. As a result, Defendant violated, and continues to violate, Sections
6 17500 and 17501. As a result of Defendant's misrepresentations, Plaintiff and Class
7 Members have been induced to purchase Products they would not have otherwise
8 purchased and/or pay higher prices than they would have otherwise paid for the
9 Products.

10 126. Defendant's misrepresentations were intended to induce reliance, and
11 Plaintiff saw, read, and reasonably did rely on them when purchasing Defendant's
12 Products. Defendant's misrepresentations were a substantial factor in Plaintiff's
13 decision to purchase the Products.

14 127. In addition, Class-wide reliance can be inferred because Defendant's
15 misrepresentations were material, i.e., a reasonable consumer would consider
16 them important in deciding whether to buy the Products.

17 128. Plaintiff and Class Members were injured as a direct and proximate re-
18 sult of Defendant's conduct because (a) they would not have purchased the Prod-
19 ucts if they had known the truth, (b) they overpaid for the Products because the
20 Products were sold at a price premium due to the misrepresentation, and/or (c)
21 they did not receive the discounts they were promised, and instead received Prod-
22 ucts with market values substantially lower than the promised market values.

23 129. Defendant's acts or omissions are further injurious to the public inter-
24 est because these practices were committed in the course of its business and have
25 been committed repeatedly, both before and after Plaintiff purchased the Products.
26 They are part of a pattern of false, misleading, and unfair advertising practices.
27 These actions have injured other persons and, if continued, have the capacity to
28 injure yet more persons.

130. Plaintiff, on behalf of himself and members of the proposed Class, requests that this Court order Defendant to restore money to Plaintiff and Class Members, and to enjoin Defendant from continuing these false and misleading practices in violation of the FAL. Otherwise, Plaintiff, Class Members, and the broader general public will be irreparably harmed and/or denied an effective and complete remedy.

SECOND CAUSE OF ACTION

Violation of California’s Consumer Legal Remedies Act

Cal. Civ. Code §§ 1750, et seq.

(On Behalf of Plaintiff and the Class)

131. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

132. Plaintiff brings this cause of action on behalf of himself and all members of the Class.

133. Plaintiff and Class Members are “consumers” as that term is defined by Cal. Civ. Code § 1761(d). “Consumer’ means an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.” *Id.*

134. Plaintiff and Class Members have engaged in “transactions” with Defendant as that term is defined by Cal. Civil Code § 1761(e). “Transaction’ means an agreement between a consumer and another person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.” *Id.*

135. Plaintiff and Class Members purchased “goods” from Defendant as that term is defined by Cal. Civil Code § 1761(a). “Goods’ means tangible chattels bought or leased for use primarily for personal, family, or household purposes [. . .]” *Id.*

136. Defendant violated, and continues to violate, numerous provisions of

1 Section 1770(a) of the California Civil Code.

2 137. Defendant violated, and continues to violate, Section 1770(a)(5) of the
3 California Civil Code by representing that Products offered for sale on its website
4 have characteristics or benefits that they do not have. Specifically, Defendant rep-
5 resents that the value of its Products is greater than in reality by advertising in-
6 flated Reference Prices for the sole purpose of enabling subsequent offers of large
7 reductions from those prices.

8 138. Defendant violated, and continues to violate, Section 1770(a)(9) of the
9 California Civil Code by advertising its Products as being offered at a discount,
10 when in fact Defendant does not intend to sell the Products at a discount.

11 139. Finally, Defendant violated, and continues to violate, section
12 1770(a)(13) by making false or misleading statements of fact concerning reasons
13 for, existence of, or amounts of, price reductions on its website, including by (1)
14 misrepresenting the regular price of Products on its website, (2) advertising dis-
15 counts and savings that are exaggerated or nonexistent, and/or (3) misrepresent-
16 ing that the discounts and savings are unusually large, when in fact they are regu-
17 larly available.

18 140. Defendant's misrepresentations were likely to deceive, and did deceive,
19 Plaintiff and other reasonable consumers who are members of the proposed Class.
20 Defendant knew or should have known, through the exercise of reasonable care,
21 that these statements were untrue and misleading.

22 141. Defendant's misrepresentations were intended to induce reliance, and
23 Plaintiff saw, read, and reasonably did rely on them when purchasing Defendant's
24 Products. Defendant's misrepresentations were a substantial factor in Plaintiff's
25 decision to purchase the Products.

26 142. In addition, Class-wide reliance can be inferred because Defendant's
27 misrepresentations were material, i.e., a reasonable consumer would consider
28 them important in deciding whether to buy the Products.

1 143. Plaintiff and Class Members were injured as a direct and proximate re-
2 sult of Defendant's conduct because (a) they would not have purchased the Prod-
3 ucts if they had known the truth, (b) they overpaid for the Products because the
4 Products were sold at a price premium due to the misrepresentation, and/or (c)
5 they did not receive the discounts they were promised, and instead received Prod-
6 ucts with market values lower than the promised market values.

7 144. Defendant's acts or omissions are further injurious to the public inter-
8 est because these practices were committed in the course of its business and have
9 been committed repeatedly, both before and after Plaintiff purchased the Products.
10 They are part of a pattern of false, misleading, and unfair advertising practices.
11 These actions have injured other persons and, if continued, have the capacity to
12 injure yet more persons.

13 145. Plaintiff seeks damages and, alternatively, restitution. Plaintiff is per-
14 mitted to seek equitable remedies in the alternative because he has no adequate
15 remedy at law. A legal remedy is not adequate if it is less certain than an equitable
16 remedy. The elements of Plaintiff's equitable claims are different than and do not
17 require the same showings as Plaintiff's legal claims. For example, to obtain dam-
18 ages under the CLRA, a plaintiff must show that they complied with the CLRA's
19 notice requirement to obtain damages. No such requirements exist to obtain resti-
20 tution. Because a plaintiff must make this additional showing to obtain damages,
21 unlike for restitution, the legal remedies are more uncertain.

22 146. Plaintiff also seeks an injunction. Legal remedies are inadequate be-
23 cause they would not prevent Defendant from continuing to engage in the unfair
24 and deceptive practices described above. Plaintiff and Class Members face an im-
25 minent threat of future harm. Plaintiff would consider purchasing Products from
26 Defendant again in the future if he could reasonably believe that Defendant's Ref-
27 erence Prices accurately reflect its regular and former prices, and that the market
28 value of its Products and discounts were truthful. Without an injunction, Plaintiff

1 and Class Members have no realistic way to know which—if any—of Defendant’s
2 Reference Prices, discounts, and sales are not false or deceptive. Accordingly,
3 Plaintiff and Class Members are unable to rely on Defendant’s advertising in the
4 future, and so cannot purchase the Products they would otherwise consider pur-
5 chasing from Defendant in the future.

6 147. Finally, the remedies at law available to Plaintiff and Class Members
7 are not equally prompt or otherwise efficient. The need to schedule a jury trial may
8 result in delay, and a jury trial would take longer and be more costly than a bench
9 trial.

10 148. Accordingly, pursuant to California Civil Code § 1780(a)(2), Plaintiff,
11 on behalf of himself and all other members of the Class, seeks injunctive relief.

12 149. CLRA § 1782 NOTICE. On November 21, 2024, a CLRA demand letter
13 was sent to Defendant’s Detroit headquarters via certified mail (return receipt re-
14 quested), which provided notice of Defendant’s violations of the CLRA and de-
15 manded that Defendant correct the unlawful, unfair, false, and/or deceptive prac-
16 tices complained of herein. Defendant does not have a principal place of business
17 in California. Nor does it have a registered corporate agent in California. If Defend-
18 ant does not fully correct, or agree to fully correct, the problems alleged by Plaintiff
19 and for each member of the proposed Class within 30 days of receipt, then Plaintiff
20 will seek all monetary relief allowed under the CLRA, including actual, punitive,
21 and statutory damages, as appropriate.

22 150. A declaration of venue pursuant to Cal. Civ. Code § 1780(d) is filed con-
23 currently with the filing of this complaint.

24 **THIRD CAUSE OF ACTION**

25 **Violation of California’s Unfair Competition Law**

26 ***Bus. & Prof. Code §§ 17200, et seq.)***

27 **(On Behalf of Plaintiff and the Class)**

28 151. Plaintiff repeats and incorporates by reference all allegations

1 contained in the preceding paragraphs as if fully set forth herein.

2 152. Plaintiff brings this cause of action on behalf of himself and all mem-
3 bers of the Class.

4 153. Defendant has violated California's Unfair Competition Law (UCL) by
5 engaging in unlawful, fraudulent, and unfair conduct (i.e., violating each of the
6 three prongs of the UCL).

7 ***The "Unlawful" Prong***

8 154. Defendant engaged in unlawful conduct by violating the FAL and
9 CLRA, as alleged above and incorporated herein. In addition, Defendant engaged
10 in unlawful conduct by violating the FTCA. The FTCA prohibits "unfair or decep-
11 tive acts or practices in or affecting commerce" and prohibits the dissemination of
12 false advertisements. 15 U.S.C. § 45(a)(1), 15 U.S.C. § 52(a). As the FTC's regula-
13 tions make clear, Defendant's false referencing pricing scheme violates the FTCA.
14 16 C.F.R. § 233.1, § 233.2.

15 ***The "Deceptive" or "Fraudulent" Prong***

16 155. As alleged in detail above, Defendant's representations that its Prod-
17 ucts were discounted, that its Reference Prices represented former or prevailing
18 market prices for the Products, or for those of similar products, that customers
19 were receiving true discounts in the amounts advertised, and that customers were
20 receiving goods with market values equivalent to the Reference Prices were false
21 and misleading.

22 156. Defendant's representations were likely to deceive, and did deceive,
23 Plaintiff and other reasonable consumers who are members of the proposed Class.
24 Defendant knew or should have known, through the exercise of reasonable care,
25 that these statements were untrue and misleading.

26 ***The "Unfair" Prong***

27 157. As alleged in detail above, Defendant committed "unfair" acts by falsely
28 advertising that its Products were discounted, that its Reference Prices represented

1 former or prevailing market prices for the Products, or for those of similar prod-
2 ucts, that customers were receiving true discounts in the amounts advertised, and
3 that customers were receiving goods with market values equivalent to the Refer-
4 ence Prices, when none of this was true.

5 158. Defendant violated established public policy by violating the CLRA, the
6 FAL, and the FTCA, as alleged above and incorporated here. The unfairness of this
7 practice is tethered to a legislatively declared policy (that of the CLRA and FAL).

8 159. These unfair acts caused Plaintiff and members of the proposed Class
9 to make purchases they otherwise would not have made, pay more for their pur-
10 chases, and/or be deprived of their expectancy interest in receiving the Products
11 as advertised.

12 160. The harm to Plaintiff and members of the proposed Class greatly out-
13 weighs any public utility of Defendant's conduct. Their injuries were not out-
14 weighed by any countervailing benefits to consumers or competition, as there is no
15 public utility to misrepresenting the prices of Products to consumers. There were
16 reasonably available alternatives to further Defendant's legitimate business inter-
17 ests other than the misleading and deceptive conduct described herein.

18 ***The Class Was Harmed***

19 161. For each prong, Defendant's misrepresentations were intended to in-
20 duce reliance, and Plaintiff saw, read, and reasonably did rely on them when pur-
21 chasing Defendant's Products. Defendant's misrepresentations were a substantial
22 factor in Plaintiff's decision to purchase the Products.

23 162. Class-wide reliance can be inferred because Defendant's misrepresen-
24 tations were material, i.e., a reasonable consumer would consider them important
25 in deciding whether to buy the Products.

26 163. Plaintiff and Class Members were injured as a direct and proximate re-
27 sult of Defendant's conduct because (a) they would not have purchased the Prod-
28 ucts if they had known the truth, (b) they overpaid for the Products because the

1 Products were sold at a price premium due to the misrepresentation, and/or (c)
2 they did not receive the discounts they were promised, and instead received Prod-
3 ucts with market values lower than the promised market values.

4 164. Defendant's acts or omissions are further injurious to the public inter-
5 est because these practices were committed in the course of its business and have
6 been committed repeatedly, both before and after Plaintiff purchased the Products.
7 They are part of a pattern of false, misleading, and unfair advertising practices.
8 These actions have injured other persons and, if continued, have the capacity to
9 injure yet more persons.

10 165. Plaintiff seeks damages and, alternatively, disgorgement and restitu-
11 tion to Plaintiff and the proposed Class of all Defendant's revenues wrongfully ob-
12 tained from them as a result of Defendant's unfair competition, or such portion of
13 those revenues as the Court may find equitable. Plaintiff is permitted to seek equi-
14 table remedies in the alternative because he has no adequate remedy at law. A legal
15 remedy is not adequate if it is less certain than an equitable remedy. The elements
16 of Plaintiff's equitable claims are different than and do not require the same show-
17 ings as Plaintiff's legal claims. For example, to obtain damages under the CLRA, a
18 plaintiff must show that they complied with the CLRA's notice requirement to ob-
19 tain damages. No such requirements exist to obtain restitution. Because a plaintiff
20 must make this additional showing to obtain damages, unlike for restitution, the
21 legal remedies are more uncertain.

22 166. Plaintiff also seeks an injunction. Legal remedies are inadequate be-
23 cause they would not prevent Defendant from continuing to engage in the unfair
24 and deceptive practices described above. Plaintiff and Class Members face an im-
25 minent threat of future harm. Plaintiff would consider purchasing Products from
26 Defendant again in the future if they could reasonably believe that Defendant's
27 Reference Prices accurately reflect its regular and former prices, and that the mar-
28 ket value of its Products and discounts were truthful. Without an injunction,

1 Plaintiff and Class Members have no realistic way to know which—if any—of De-
2 fendant’s Reference Prices, discounts, and sales are not false or deceptive. Accord-
3 ingly, Plaintiff and Class Members are unable to rely on Defendant’s advertising in
4 the future, and so cannot purchase the Products they would otherwise consider
5 purchasing from Defendant in the future.

6 167. Finally, the remedies at law available to Plaintiff and Class Members
7 are not equally prompt or otherwise efficient. The need to schedule a jury trial may
8 result in delay, and a jury trial would take longer and be more costly than a bench
9 trial.

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.


PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment as follows:

- A. For an Order:
 - a. Certifying the Class;
 - b. Appointing Plaintiff as representative of the Class;
 - c. Appointing Plaintiff's counsel as Class Counsel;
- B. For actual damages, treble damages, and punitive damages where applicable, and according to proof at trial;
- C. For restitution and disgorgement of all profits and unjust enrichment, and other just equitable relief;
- D. For statutory and civil penalties and special damages where applicable, and according to proof at trial;
- E. For pre- and post-judgment interest on monetary damages;
- F. For preliminary and permanent injunctive relief;
- G. For reasonable attorneys' fees and costs and expert fees and costs as allowed by law; and
- H. For such other relief as this Court deems just and proper.

Dated: November 26, 2024

Respectfully submitted,
KING & SIEGEL LLP

By: 
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the Putative Class